

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

THE KROGER CO.,	:	Case No.: C-1-02-439
	:	
Plaintiff,	:	Beckwith, J.
	:	Sherman, M.J.
	:	
v.	:	<u>PLAINTIFF'S ANSWER TO</u>
	:	<u>COUNTERCLAIMS</u>
	:	
MALEASE FOODS CORP.,	:	
	:	
Defendant.	:	

Plaintiff The Kroger Co. answers the counterclaims of Defendant Malease Foods Corp. as follows:

FIRST DEFENSE

1. Plaintiff The Kroger Co. incorporates its entire Complaint by reference.
2. Plaintiff The Kroger Co. admits the allegations in paragraph 18 of the Counterclaim.
3. Plaintiff The Kroger Co. admits the allegations in paragraph 19 of the Counterclaim.
4. With respect to paragraph 20 of the Counterclaim, Plaintiff The Kroger Co. states that the documents referenced therein speak for themselves and therefore, to the extent that the allegations are inconsistent with the plain meaning of the documents, those allegations are denied.
5. Plaintiff The Kroger Co. admits the allegations in paragraph 21 of the Counterclaim.
6. With respect to paragraph 22 of the Counterclaim, Plaintiff The Kroger Co. states that the documents referenced therein speak for themselves and therefore, to the extent that the allegations are inconsistent with the plain meaning of the documents, those allegations are denied.

7. Plaintiff The Kroger Co. admits the allegations made in the Complaint pertinent to paragraph 23 and denies the balance of the allegations in paragraph 23 of the Counterclaim.
8. Plaintiff The Kroger Co. denies the allegations in paragraph 24 of the Counterclaim.
9. Plaintiff The Kroger Co. admits the allegations made in the Complaint pertinent to paragraph 25 and denies the balance of the allegations in paragraph 25 of the Counterclaim.
10. Plaintiff The Kroger Co. admits the allegations made in the Complaint pertinent to paragraph 26 and denies the balance of the allegations in paragraph 26 of the Counterclaim.
11. Plaintiff The Kroger Co. admits the allegations made in the Complaint pertinent to paragraph 27 and denies the balance of the allegations in paragraph 27 of the Counterclaim.
12. Plaintiff The Kroger Co. denies the allegations in paragraph 28 of the Counterclaim.
13. Plaintiff The Kroger Co. denies the allegations in paragraph 29 of the Counterclaim.
14. Plaintiff The Kroger Co. denies the allegations in paragraph 30 of the Counterclaim.
15. Plaintiff The Kroger Co. denies the allegations in paragraph 31 of the Counterclaim.
16. Plaintiff The Kroger Co. denies the allegations in paragraph 32 of the Counterclaim.
17. Plaintiff The Kroger Co. denies the allegations in paragraph 33 of the Counterclaim.
18. Plaintiff The Kroger Co. denies the allegations in paragraph 34 of the Counterclaim.
19. Plaintiff The Kroger Co. incorporates its answers contained in paragraphs 1 through 18 by reference.
20. Plaintiff The Kroger Co. denies the allegations in paragraph 36 of the Counterclaim.
21. Plaintiff The Kroger Co. incorporates its answers contained in paragraphs 1 through 20 by reference.
22. Plaintiff The Kroger Co. denies the allegations in paragraph 38 of the Counterclaim.

First Affirmative Defense

1. Declaratory judgment is not a proper remedy as a counterclaim in an action for damages.

Second Affirmative Defense

2. Defendant Malease waived any rights it may have had relative to the determination of the fair market price of the three Sites referenced in the Counterclaim under Section 3(a) of the Two-Party Agreements between Balkhouse Associates and Malease, and Kroger owned the rights held by Balkhouse Associates.

Third Affirmative Defense

3. The purchase options referenced in the Counterclaim are valid, the exercise of those purchase options are valid, and the sale of Balkhouse Associates interests to Kroger are valid, thus, there is nothing for the Court to rescind and nothing for the Court to declare.

Respectfully submitted,

/s/ Douglas R. Dennis

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2003, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed via U.S. mail to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

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